



OFFICIAL REPORT
AITHISG OIFIGEIL

Education, Children and Young People Committee

Wednesday 7 June 2023

Session 6



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CONTENTS

	Col.
SUBORDINATE LEGISLATION	1
Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2023	1

EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE
18th Meeting 2023, Session 6

CONVENER

*Sue Webber (Lothian) (Con)

DEPUTY CONVENER

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

COMMITTEE MEMBERS

Stephanie Callaghan (Uddingston and Bellshill) (SNP)

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

*Pam Duncan-Glancy (Glasgow) (Lab)

*Ross Greer (West Scotland) (Green)

*Stephen Kerr (Central Scotland) (Con)

*Bill Kidd (Glasgow Anniesland) (SNP)

*Ruth Maguire (Cunninghame South) (SNP)

*Willie Rennie (North East Fife) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Magdalene Boyd (Scottish Government)

Graeme Dey (Minister for Higher and Further Education; and Minister for Veterans)

Nicola Nisbet (Scottish Government)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 7 June 2023

[The Convener opened the meeting at 09:30]

Subordinate legislation

Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2023

The Convener (Sue Webber): Good morning, and welcome to the 18th meeting in 2023 of the Education, Children and Young People Committee. Stephanie Callaghan has sent her apologies.

Our first item of business is consideration of subordinate legislation. The regulations—Scottish statutory instrument 2023/142—are being considered under the negative procedure. They will amend the Education (Fees) (Scotland) Regulations 2022 and the Student Support (Scotland) Regulations 2022, to include a new provision for individuals who have been granted a form of leave to enter or to remain in the UK.

The committee wrote to Graeme Dey, the Minister for Higher and Further Education; and Minister for Veterans, for more information about the regulations and received a response. Some issues were still outstanding and we welcome him to give evidence on those today. He is joined by Nicola Nisbet, head of strategic policy at the Student Awards Agency Scotland, and by Magdalene Boyd of the Scottish Government legal directorate. I thank everyone for their attendance, particularly at such short notice.

We have agreed that the minister will make an opening statement before we move to questions from members.

Graeme Dey (Minister for Higher and Further Education; and Minister for Veterans): Thank you for the opportunity to address you today regarding the amending regulations that are before you.

As I set out in my letter of 31 May, following a judicial review last year, the Court of Session declared that the long residence provisions in our education fees and student support regulations were unlawful.

Those provisions were originally brought in following a judicial review of the position in England by the United Kingdom Supreme Court,

and with a view to providing students who had not been born in the United Kingdom and who did not have indefinite leave to remain, with the opportunity to access financial support when proceeding into further and higher education. Although the lengthy timescales associated with the long residence provisions drew criticism from the court, the position of offering full support to those who live in Scotland and regard it as their home, and who are therefore more likely to stay here after their studies and contribute to society, is a sound one.

At the conclusion of the judicial review proceedings, ministers committed to introducing amending regulations for the start of the 2023-24 academic year, to ensure that students who had made Scotland their home, or who resided in the country and wished to study in further or higher education, had parity of access to support with their school peers.

The Scottish Government launched a public consultation on the proposals in January 2023 and undertook stakeholder engagement, all of which helped to shape the proposals that are before the committee today.

The proposals expand the pool of students from a range of immigration statuses who can now be deemed as being Scotland-domiciled. That means that, for the purposes of being assessed for a home fee place with access to tuition fees and, in some instances, access to student bursaries and/or loans, all students—other than those from exempted groups—must now meet the same length of residence in the UK, which is three years, to access that support. That sets all potential students who have a lawful basis for residing in the UK or Scotland and who wish to proceed into further and higher education on a level footing with their school peers—bar some noted exceptions.

If the amending regulations were to be annulled, the substantive regulations would revert to our previous position on long residence, which would undoubtedly cause deep upset for many members of our communities who have made Scotland their home and wish to pursue further and higher education but would no longer be able to do so.

I look forward to discussing the regulations further and have my two most well-versed officials with me to assist with proceedings.

The Convener: Thank you for your candid comments. Willie Rennie has some initial questions.

Willie Rennie (North East Fife) (LD): Thank you for coming at such short notice, minister. We understand that this is not a common circumstance and appreciate your time.

The legislative landscape is constantly changing, particularly because of Brexit. Are we confident that these regulations will not open the door and allow students from the rest of the UK to apply to have the same rights and opportunities in Scotland as those who are in the expanded group will be entitled to?

Graeme Dey: I will bring in Magdalene Boyd to answer that question.

Magdalene Boyd (Scottish Government): We are confident that they will not. The regulations still require ordinary residence in Scotland. A person must have been in the UK for three years and currently “ordinarily resident” in Scotland, which is a term that is used in a wide range of case law. Our regulations expand on the definition of “ordinarily resident” for the purposes of student support and clarify the fact that a person who is only in Scotland to access education is not considered to be ordinarily resident in Scotland. That provision, which has always been in our regulations, prevents forum shopping from the rest of the UK.

Willie Rennie: You do not foresee any legal challenges that might open up that opportunity. You are confident that the regulations are robust.

Magdalene Boyd: Yes, the Scottish Government is confident just now.

Stephen Kerr (Central Scotland) (Con): You said that you are “confident just now”. I know that that is probably legal speak for not setting anything in concrete.

I have concerns about how this will be interpreted because of the terminology of “ordinarily resident”. For example, the Scottish Parliament information centre’s briefing for today’s meeting says:

“The Scottish Government expects someone who is ordinarily resident in Scotland to have made their home in Scotland with the intention of staying and living here”.

I feel that that is a huge open barn door. How will we test expectations and intentions? For example, someone could move here at Easter, do a job through spring and into summer—a summer job, basically—apply to go to a Scottish university, have an address in Scotland, be able to produce the necessary documentation to prove that they are resident there and then make an application. That is correct, is it not?

Magdalene Boyd: To clarify, that is not in these amending regulations. The ordinary residence requirements have been in our student support legislation since tuition fees were increased in the rest of the UK.

Graeme Dey: That is not captured by the regulations.

Stephen Kerr: The minister says that it is not captured by the regulations, but the criteria given in the minister’s letter are that someone must be

“ordinarily resident in the UK for three years”,

that they are

“ordinarily resident in Scotland on the relevant date”,

which is the date of commencement of the course, and that they

“Have been granted a form of leave”.

We absolutely want the friends who have joined us in Scotland for various reasons, most notably Ukrainians, to have access to higher and further education, but you are saying that nothing will have changed in respect of people from the rest of the United Kingdom, whereas, to me as a non-lawyer—it is important that I make that point—this reads as if there are ways to get round that.

Magdalene Boyd: There is nothing in our current amending regulations that changes the position for access to Scottish universities, or the funding arrangements, for students from the rest of the UK.

Stephen Kerr: Are you saying that, in the scenario that I suggested, that individual, who has an address in Scotland and has been here for a few months, would not qualify?

Magdalene Boyd: No. They potentially would qualify—

Stephen Kerr: Ah.

Magdalene Boyd: —depending on assessment by the Student Awards Agency Scotland, but that has always been the case. SAAS can determine that that person has made Scotland their home, which can happen immediately if a family has moved from England prior to the relevant date. It is about on-going intention.

Graeme Dey: I think you are talking about gaming the system.

Stephen Kerr: Yes.

Graeme Dey: That is not going to happen.

Stephen Kerr: That is not going to happen.

Graeme Dey: No, because we have SAAS as a fallback.

Stephen Kerr: Okay, fine. I appreciate the minister putting that on the record. I am sure that the minister understands why I am labouring the point, which is because of the nature of the cap, the number of places and the Scottish Government’s financial commitment to those places. I am obviously anxious that domiciled Scots should be able to take up those places. I hope that that is seen as the natural inclination that I would have, as a Scot.

Pam Duncan-Glancy (Glasgow) (Lab): I reiterate Willie Rennie's thanks to the minister for coming today, because I know that this is an unusual situation. I thank the minister for shifting things around in order to be here.

This issue first came to my attention when my colleague Paul Sweeney, who was then an MP, wrote to John Swinney in 2017 about a family who were really struggling to get access to, and wanted to contribute through, this system, so I understand, value and support the changes that are in the regulations.

However, my concern is that universities, given their current circumstances, need to understand what the regulations will mean for places and for finance. How many more people does the minister believe will be able to access home tuition fee rates and living costs as a result of the changes that are to be made?

Graeme Dey: You are asking what additional pressure there will be. We estimate the numbers to be somewhere between 36 and 76. To put that in perspective, we are looking at pressure of somewhere between 0.03 and 0.06 per cent.

Pam Duncan-Glancy: How did you arrive at those figures?

Graeme Dey: I will bring in Nicola Nisbet on that.

Nicola Nisbet (Scottish Government): I think that, in the minister's response of 31 May, we set out where the parity is, which is the payment scheme that is currently running, through SAAS, to support those students who have been impacted by the judicial review decision.

Currently, we have fewer than 80 students in each of the year cohorts for the 2020-21 and 2021-22 academic years. We have also looked manually at the amount of applications that have come through since SAAS opened for applications in April.

We reckon that, from the amount of applications that have come through, about 0.03 per cent are new students who would not previously have been eligible. That is based just on the applications. This is the first year in which we intend to run the new regulations. That is the figure that we can give just now—that percentage point over the 120,000 students that would access funding through HE. That variance is where the figures came from.

Pam Duncan-Glancy: Are you confident that that number will not increase as a result of the regulations?

Nicola Nisbet: That is the number using the parameters from the regulations and the payment

scheme, for which the eligibility is in a very similar vein to what is in the regulations now.

Pam Duncan-Glancy: Does that include the changes for postgraduate study?

Nicola Nisbet: The changes in relation to postgraduate study are technical and are to do with students who have studied here and wish to study in the rest of the UK. Previously, there could not be equivalence in Scotland in order for them to do that. The changes remove that requirement. The numbers are not expected to be big. Many of the students who were studying in England, Wales or Northern Ireland were choosing to go into postgraduate study, and, if there was no equivalence, they were able to do that and be funded. The other change for postgraduate study is that the tuition fee has increased for 2023-24.

Pam Duncan-Glancy: On what basis do you think that it is a technical arrangement only?

My understanding is that there are around 11,000 undergraduate students, of which 5,000 go on to do postgraduate courses elsewhere in the UK. That is a pretty big number. Do you know how many of those people will now be able to access free tuition as a result of the changes?

Nicola Nisbet: I do not know, but I can definitely take that away and report back.

Pam Duncan-Glancy: Thank you. I want to put on the record that I think that the change is really beneficial, and I can see that it would mean that people could naturally follow on their course of education, but I think that the numbers are quite big.

Minister, will there be any additional funding associated with some of those changes for universities?

Graeme Dey: Given the numbers, no—not at this stage.

Pam Duncan-Glancy: Is that something that you would look at doing in the future, if the numbers increased? By what amount would the numbers need to increase before you would start to give universities more money?

Graeme Dey: It is impossible to answer that, but we are always reviewing how we provide support. There are on-going processes that will follow from the regulations, so we will continue to look at the situation. Clearly, if there was a substantial increase, that would have to be taken on board.

Pam Duncan-Glancy: What would you consider to be a substantial increase?

Graeme Dey: Ach—I am not going to be pinned down on a number. I think that we can all work out what a ballpark figure for a substantial increase

would look like. I give an assurance that we will continue to look at the situation.

Pam Duncan-Glancy: I appreciate that assurance, and I would welcome further correspondence on the numbers. However, if you do not put a particular number on what you would consider to be substantial, that presents a question for universities. We already know that there is demand for capped places and that it outstrips the supply. The regulations could further increase that demand—for good reason, as I set out when I started. However, it is only fair that universities understand what the likely costs could be and what the implication for funding and capped places will be.

Graeme Dey: I am in no doubt that they will seek such an understanding, and we will provide it. That would only be reasonable.

Pam Duncan-Glancy: Thank you. I appreciate that, minister.

09:45

The Convener: I want to clarify some of the terminology that Pam Duncan-Glancy used. It is not free tuition for postgraduates; it is, in fact, a loan. Can you confirm that?

Nicola Nisbet: Yes. It is a tuition fee loan and living cost loan for the full-time postgraduate students. For those who are studying part time, it is a tuition fee loan.

The Convener: Thank you. Stephen Kerr is next. Briefly, please.

Stephen Kerr: I will be very brief. In relation to tuition fees, are you willing to consider Sir Peter Mathieson's idea to allow domiciled Scots the opportunity if they are unable to obtain a place on a course at a Scottish institution—

The Convener: You need only answer as briefly as you like, Mr Dey, and in the context of the regulations that are in front of us today.

Stephen Kerr: I have not asked my question yet.

Graeme Dey: I refer Mr Kerr to the answer that I gave when I was sitting here a few weeks ago.

The Convener: Thank you. We now move to questions from Bob Doris.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Minister, it is interesting that you mention being here a few weeks ago, because I want to go back to the future a little bit. When I was first elected, in 2007, a young constituent of mine in Sighthill who was originally from Mogadishu in Somalia could not go to university because of the rules and regulations at the time. I made representations to the then

Cabinet Secretary for Education and Skills, Fiona Hyslop, and regulations were put in place to allow young people from asylum-seeking families to go to university. This is something that we have fixed and dealt with appropriately previously. Unfortunately, through the passage of time, we have not been as attentive to the legislation as we should have been, to make sure that future generations of young people who are in the asylum process can have their right to an education.

Will the new regulations be kept under review to make sure that we do not find ourselves in that back-to-the-future position again, given that the Scottish Government previously did the right thing and my constituent was the first asylum-seeking under-18 to go to university in Scotland with a fully funded place?

Graeme Dey: Prior to coming to the committee today, we were talking about the need to ensure that all regulations that cover this area are kept up to date as far as possible. That is, therefore, very much our intention—while accepting that a variety of pressures exist in Government.

Bob Doris: That is helpful. Now that I have talked about going back to the future, I will ask about future proofing. I had a constituent who was over 18 when they arrived in Scotland, but they will be here for a heck of a long time and certainly way beyond three years. They still have no decision on their case and they have no temporary leave to remain. They are keen to get a higher education place at the City of Glasgow College. They will not be captured by the regulations and I absolutely understand why, but something will have to give at some point. I would prefer it if the Home Office speedily made the correct decision to give my constituent the rights that they deserve. At what point will the Scottish Government return to look at these matters for adults who wish to be students but who are caught in a system not of their making? Will the Scottish Government look at that at some point for the benefit of my constituent?

Nicola Nisbet: Yes. We put that into a future work plan as part of the consultation analysis report that was published on 12 May. It covers areas of work that were highlighted through the consultation and stakeholder engagement on which Scottish Government officials would have to engage further. One of those is asylum seekers who are over the age of 18 and have submitted a claim. We recognise that issues were raised about that area of work through the engagement process.

Bob Doris: So, convener—

The Convener: Briefly.

Bob Doris: Well, it is relevant to the regulations.

The Convener: Yes, I get that, but I am asking you to be more concise with your questions.

Bob Doris: I thought that I was giving the appropriate context. I have got City of Glasgow College to accept that it will charge my constituent home student fees if they can take up their place and have no right to funding from the Student Awards Agency Scotland. Is the Government looking at any pot of cash—I know that this is hugely challenging in the current times—that students might be able to access when the higher education institution has agreed and is willing to charge home student fees when they do not have to, to allow my constituent and others to access higher education?

Nicola Nisbet: Guidance for discretionary funds in further and higher education includes provision for support for asylum seekers if they are facing financial hardship. Even if an asylum seeker is not SAAS funded, there is a way in which they can access hardship support that comes from Scottish Government funding to the colleges and universities.

Bob Doris: I have a final question, convener.

The Convener: Briefly.

Bob Doris: It is all relevant to the regulations.

The Convener: I understand that; I am just trying to make your—

Bob Doris: I know, but we are here to scrutinise the regulations. Another issue that I have experienced is that universities have been reluctant to accept students with temporary leave to remain but an uncertain future because they might not be able to guarantee that they can finish their course. That might be a thing of the past now, but is the minister aware of that as having been an issue previously? Should that be an issue?

Graeme Dey: It is not an issue that I am alive to, but please bear in mind that I have been in post for about nine weeks.

Bob Doris: Okay. Thank you.

The Convener: Thank you for those responses, minister. Does any member wish to make any further comments? I am just making it clear that this is where you would prompt any further action. It looks like we are all okay.

Minister, I thank you for your time this morning. We will have a short suspension to allow our witnesses to leave.

09:51

Meeting suspended.

09:52

On resuming—

The Convener: Welcome back. The committee must now decide whether it wishes to report on the negative instrument. This is when I look for members to speak.

Willie Rennie: We asked questions about all the things we were concerned about and we got as clear assurances as we could expect from the minister. I suspect that the regulations might come back in another form at some point, but I am satisfied for now.

Pam Duncan-Glancy: I, too, am satisfied. I appreciate the minister's willingness to send information to the committee when he has it. As long as we have a mechanism to make sure that that is forthcoming, I am content.

Stephen Kerr: I completely agree with Willie Rennie. The minister gave categorical assurances, but we will have to monitor the situation as it develops, because there are issues that might come back to us in due course.

Bob Doris: I welcomed the regulations before I heard from the minister, and I got the assurances that I required from the minister that they are robust. The only further assurance that I need is that our committee will continue to monitor them and return to them during the next parliamentary session, to see how successful they have been and how we can improve them further.

The Convener: Thank you. As no one else wishes to comment, do members agree that the committee does not wish to make any recommendations in relation to the regulations?

Members indicated agreement.

The Convener: Thank you. That concludes our business in public this morning. We now move into private for our final agenda items.

09:54

Meeting continued in private until 11:28.

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